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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/635,358	08/09/2000	Rebecca E. Whitmore	013550-129	5915

21839 7590 09/27/2002

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EXAMINER

CHANG, VICTOR S

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 09/27/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/635,358

Applicant(s)

WHITMORE ET AL.

Examiner

Victor S Chang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 9-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-8, drawn to a sheet of flexible material for wrapping sandwiches, classified in class 428, subclass 347.
  - II. Claims 9-24, drawn to a wrapped sandwich, classified in class 426, subclass 106.
2. Inventions Group I and Group II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions, the sheet of Group I can be used in ways other than to enclose a sandwich. For example the sheet can be used to enclose products other than a sandwich and even be used to package non-edible product such as compact disc jewel cases. Furthermore, the sheet could be used as covering sheet for a rigid tray, or the sheet could have non-packaging uses such as an adhesive label.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Alan Kopecki on 3/3/2002 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-8. Affirmation of this election must be made by applicant in replying to this Office action.

Claims 9-24 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Oath/Declaration***

5. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because it lacks Applicants' signature.

*there is a  
copy without  
signature,  
however, signed  
copy is in the  
file.*

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Money (US 6016950).

Money's invention is directed to forming a wrapper for an article by applying adhesive to a web of sheet material at spaced locations along one edge of the web and along pairs of curved convergent lines within the body of the web, and folding the web to form a flattened sleeve with the edge portions of the web overlying each other, heat sealing the ends of the edge portions together and heat sealing the sides of the sleeve

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together (column 1, lines 53-67). FIG. 13 shows a complete stage by stage preparation of the wrapper, forming the central enclosure and placing an article in it, closing over the central enclosure and completion of the wrapping (column 2, lines 43-45). The wrapper is formed out of paper, coated paper, printed paper, card or plastics material (column 3, lines 52-53). Money teaches that the wrapper provides a flexible food wrap which is adhered by heat sealing to form an enclosure for the food product to fully protect it (column 4, lines 31-35). Also, these claims essentially read on paper or plastic substrates coated with a heat sealable, i.e., well known, adhesive in several geometric arrangement that are well within the ordinary skill of the art. Such structures (and variations) are clearly not patentable. Although Money does not expressly teach the use of multiply sheet, the exact location of the heat sealable adhesive at the edges, and the release agent on the opposite side of the sheet, the use of multiply sheets to improve the barrier property together with the release agent on the opposite side of an adhesive sheet is also strongly believed to be conventional and well known, and as such these aforementioned elements are each believed to be, if not expressly or inherently disclosed, obvious optimizations to one of ordinary skill in the art. Finally, note also as evidence the state of the art Leander (US 2510120), which teaches that laying various shapes and forms of adhesive strips on a substrate at suitable locations is well within the ordinary skill in the art (Figs. 1 and 2).

←  
bad  
English

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. In addition, the following references are cited of interest for making food wrapper:

US 4404242 to Squier

GB 2231549 A

GB 1508492

EP 0719656 A2

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S Chang whose telephone number is 703-605-4296. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

VSC  
September 24, 2002

DANIEL ZIRKER  
PRIMARY EXAMINER  
GROUP 1900-  
1700



***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-8, drawn to a sheet of flexible material for wrapping sandwiches, classified in class 428, subclass 347.
- II. Claims 9-24, drawn to a wrapped sandwich, classified in class 426, subclass 106.

The inventions are distinct, each from the other, because the sheet of Group I can be used in ways other than to enclose a sandwich. For example the sheet can be used to enclose products other than a sandwich and even be used to package non-edible product such as compact disc jewel cases. Furthermore, the sheet could be used as a covering sheet for a rigid tray, or the sheet could have non-packaging uses such as an adhesive label.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Alan Kopecki on March 3, 2002 a provisional election was made without traverse to prosecute the invention of group I, claims 1-8. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9-24 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen  
Examiner  
Art Unit 1761  
April 17, 2002